IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 265 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS

==========

1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SALIM CHANDBHAI MANSURI

Versus

COMMISSIONER OF POLICE A'BAD CITY

Appearance:

1. Special Civil Application No. 265 of 2003

MR KAMAN SHUKLA for MR MIG MANSURI for Petitioner No. 1

MS NANDINI JOSHI, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE KSHITIJ R.VYAS

Date of decision: 23/05/2003

ORAL JUDGEMENT

The petitioner-detenu, in this petition, under Article 226 of the Constitution of India, has challenged

his order of detention dated 30.11.2002 passed by the Commissioner of Police, Ahmedabad City, respondent No.1 herein, under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (in short, 'the PASA Act').

In the grounds of detention of even date supplied to the petitioner, the detaining authority has referred to one Prohibition case registered against the petitioner which is at the stage of investigation. Over and above the said case, the detaining authority has also taken into consideration the statements of two witnesses whose identity has not been disclosed claiming privilege under Section 9(2) of the PASA Act for the alleged incidents having taken place on 7.10.2002 and 15.11.2002 wherein the petitioner is involved in anti social activities. Considering the aforesaid material, the detaining authority has recorded a finding that the petitioner is a 'Bootlegger' within the meaning of Section 2(b) of the PASA Act.

Since this petition is capable of being disposed of on the first contention advanced by the learned Counsel appearing on behalf of the petitioner, it is not necessary for me to consider the other contentions advanced by the learned Counsel. Learned Counsel submits that the statement of witness No.1 was recorded on 26.11.2002 and the statement of witness No.2 was recorded on 26/27.11.2002 which were verified by the detaining authority on 30.11.2002 and on the very same day, the order of detention has been passed. He, therefore, submits that there is no sufficient time lag in between recording and verifying and passing of detention order and hence there is no genuine examination of the witnesses as such or of their statements and the privilege claimed under Section 9(2) of the PASA Act is mechanical exercise of power. In the submission of the learned Counsel, there is no material whatsoever to support the assertion whether the allegations made by the concerned witnesses were genuine or not. The police and the detaining authority both have relied on the statements of the witnesses without verifying the correctness of the same, as it appears that without actually calling these witnesses in person, the detaining authority claimed the privilege under Section 9(2) of the PASA Act mechanically. In view of this, it is submitted that non-disclosure of the names and particulars and identity of the witnesses is not justified and has deprived the detenu of the right to know the grounds of detention and since the detaining authority has not

applied its mind to the question whether or not the supply of the relevant particulars of materials would be injurious to the public interest and thus, the exercise of privilege is vitiated by the factual malafides and hence the impugned order of detention is required to be quashed and set aside.

Learned AGP Ms.Nandini Joshi invited my attention to the affidavit-in-reply filed by the Commissioner of Police, Ahmedabad City, more particularly to paragraph 10 of the same, which reads as under:

> "10. With respect to the contents of Paras: 10(f),(g) and (h) of the petition, I deny all the averments, contentions and the averments made therein. I say and submit that the genuineness and correctness of the statements of the witnesses have been verified by me personally and I came to the conclusion that if the identity of the witnesses is disclosed to the petitioner then in that case the chapter of new harassment would be started and after striking balance between the public interest and the private interest I exercised the privilege under Section 9(2) not to disclose the identity of the witnesses in the larger interest of the public. I deny that the statements of the witnesses are the stereotype or vague. As a matter of fact, the statements of the witnesses are very specifically and categorically stated the date, time and the place and the manner in which the petitioner and his accomplices have acted to spread out the reign of terror in the area. Hence, the reliance has been placed by me on the statements of the witnesses and the order of detention is thus, justified."

In paragraph 14 of the said reply, it is inter-alia pointed out that :

> "14..... I say that all the material placed before me for consideration while passing the order of detention I myself have independently claimed it and I arrived at the subjective satisfaction to pass the order of detention."

The question now arises for consideration is whether the subjective satisfaction arrived at by the detaining authority for the need of exercise under Section 9(2) of the PASA Act is justified on his mere statement about having verified veracity, genuineness and correctness of the fear expressed by the witnesses in the

instant case and in absence of any contemporaneous material. In the instant case, admittedly, a prohibition case is registered against the petitioner on 26.11.2002. The sponsoring authority recorded the statements of two witnesses for the unregistered offences on 26.11.2002 and 27.11.2002 and submits the proposal of detention on 27.11.2002. The detaining authority verifies the statements of the witnesses on 30.10.2002 and also passes the order of detention on the same day. There is nothing on record to show that the detaining authority has considered the proposal of 27.11.2002 prior to passing of the detention order. All that has been stated by him is that he personally verified the statements and the material placed before him. In an identical situation, this Court, in the case of Ranubhai Bhikhabhai Bharwad v. State of Gujarat and ors., reported in 2000 (3) GLR 2696 has observed that:

> "The manner in which the verification has been recorded of the witnesses made by the three witnesses for the purpose of Sec.9(2) shows that the same has been done only as an empty formality inasmuch as the same witnesses had been called before the detaining authority and the detaining authority had recorded that whatever the statements made by the witnesses were correct. Thus, the whole exercise appears to have been done as a mechanical exercise and it is not borne out that there is an active application of mind on this aspect of the matter by the detaining authority for the purpose of verification of the facts as had been disclosed by the witnesses so as to express the fear and to invoke the privilege under Sec.9(2) against the disclosure of the names and addresses of the witnesses and it thus appears on the basis of the ratio of the decision of the Division Bench that it is a case of wrong exercise of power under Sec.9(2) and it is established that in such cases, the wrong exercise of power under Sec.9(2) adversely affects the detenu's right of making an effective representation guaranteed under Art.22(5) of the Constitution of India."

In my opinion, the ratio laid down in the above decision squarely applies to the facts of the present case. Once the materials are placed before the detaining authority with the proposal by the sponsoring authority, it must have reasonably sufficient time for the purpose of verification of the facts and the consideration of the entire material with an active application of mind and

the order has to be passed at the earliest opportunity, but in this process to strike the balance between the public interest and the right of the detenu either of the two should not be defeated in any manner and the whole process must indicate that the detaining authority had applied its mind with the requisite approach and it had also devoted sufficient time before arriving at the conclusion that the detenu was required to be detained immediately. As stated above, the fact that the detaining authority has verified the statements of the witnesses on 30.11.2002 and passed the order of detention, on same date in my opinion, the requirement of maintaining the balance has been defeated and the detention order has been passed mechanically without application of mind and therefore, the order of detention is required to be quashed and set aside.

In the result, the petition is allowed. The impugned order of detention dated 30.11.2002 passed against the detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute. Direct service is permitted.

(Kshitij R. Vyas, J.)

Sreeram.